

A DISCUSSION OF SUPPLEMENT VS. SUPPLANT

The Rule

The supplement not supplant provision requires that federal funds be used to augment the regular educational program, and not to substitute for funds or services that would otherwise be provided during the time period in question. The statute requires that state and local educational agencies (SEA's and LEA's) use federal funds received under Title I only to supplement the amount of funds available from nonfederal sources for the education of students participating in Title I. The SEA and LEA cannot use these federal funds to supplant funds that would, in the absence of Title I funds, have been spent on Title I students (Title I, Part A, Section 1120A(b)).

The OMB Circular A-133 Compliance Supplement elaborates on instances when it is presumed that supplanting has occurred:

- If the SEA or LEA uses federal funds to provide services that the SEA or LEA was required to make available under other federal, state or local laws;
- If the SEA or LEA uses federal funds to provide services that the SEA or LEA provided with nonfederal funds in the prior year; or
- If the SEA used Title I, Part A funds to provide services for participating children that the SEA or LEA provided with nonfederal funds for nonparticipating children.

The bottom line question on supplanting is: For the time period at issue, what would have occurred in the absence of federal funds?

Program Designs

There are several types of programs that meet the supplement, not supplant requirement. As provided in the statute and also highlighted in the schoolwide and targeted assistance school sections of this guidance, schools are to use effective instructional strategies that give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer programs, and minimize removing children from the regular classroom during regular school hours for Title I services.

Application in Targeted Assistance or Schoolwide Program

In a targeted assistance school, the supplanting prohibition is typically interpreted to mean that *additional programmatic services* must be provided to identified Title I students. Historically, in an effort to demonstrate compliance with the supplanting prohibition, LEA's frequently designed Title I programs to "pull out" the identified Title I students from the regular classroom and provide them with additional services in a segregated Title I only setting. The 1994 reauthorization discouraged the pull-out model in favor of a more integrated, "push-in" methods of instruction. However, even in a more integrated model in a targeted assistance program, the school must be able to show that additional resources were directed toward identified eligible

beneficiaries. **These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-Federal funds had the Federal funds not been available.**

The supplanting analysis in a schoolwide program is quite different from the targeted assistance analysis. Because schoolwide program funds may be consolidated and used to support any expenditure, supplanting is purely a *fiscal* analysis, not *programmatic*. In a Title I schoolwide program, a school is not required to provide supplemental services to identified children. A school operating a schoolwide program does not have to: (1) show that Federal funds used within the school are paying for additional services that would not otherwise be provided; (2) demonstrate that Federal funds are used only for specific target populations; or (3) separately track Federal program funds. Such a school is required to use funds available under Title I to support its schoolwide program to supplement the total amount of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency (Title I, Part A, Section 1114). The schoolwide program is not required to demonstrate that any particular service is supplementary to the services regularly provided in that school to all students.

Exception to Supplement Not Supplant

Title I authorizes an exception to the supplement not supplant requirement by allowing LEA's and SEA's to exclude certain funds from the supplanting analysis. This exception was revised in the 1994 reauthorization, and amended again in 1996. NCLBA continues this provision.

In determining compliance, an SEA or LEA may exclude supplemental state and local funds that were expended in any school or attendance area for programs that meet the "intent and purposes" of Title I, Part A (Amendment to 200.63, Exclusion of Supplemental State and Local Funds from Supplement, not Supplant effective 11/12/98). For example, in a state that has no mandatory summer school, assume a school district uses Title I, state and local funds to provide optional summer school for students who are academically challenged. In the absence of Title I funds, summer school may still have been provided with state and local funds, which would ordinarily result in a supplanting violation. However, in accordance with this exception, the program meets the intents and purposes of Title I to serve low-achieving students, and the state and local funds used are in addition to the resources used for the regular program, leaving the Title I funds supplementary to what is provided under the regular program

No Particular Instructional Method

No LEA is required to provide Title I services through a particular instructional method or instructional setting to demonstrate the agency's compliance with the supplanting prohibition. For instance, the LEA is not required to implement a pull-out program model simply to show the services provided to intended beneficiaries were supplemental to the regular program.

In Attachment A are summaries of a case study and numerous policy letter determinations from the U.S. Department of Education on the Supplement vs. Supplant Issue.

Case Study-Buying Computers

An LEA is considering buying four computers for each school and using local funds for non-Title I schools and Title I funds for Title I schools. If this was done, it is an obvious violation of the supplement, not supplant, provision. An LEA is obligated to equitably distribute computers paid for with state and local funds to both Title I and non-Title I schools. With respect to schoolwide programs, where funds, not services, must be supplementary, such schools would either have to receive district-purchased computers or district funds in an amount equal to the cost of the computers.

The LEA could first equitably equip all schools with computers at a reduced level and then, purchase additional computers with Title I funds for services to Title I participants. In this situation, Title I would not be supplanting local funds and the district would equitably be fulfilling its computer equipment goals for all schools. Other alternatives could apply as supplement, not supplant, applies with respect to state and local public funds: for example, if an LEA provided an equitable amount of nonfederal resources to all its schools, it could use Federal Title III technology grant funds to buy computers for its non-Title I schools and Title I funds to buy computers for its Title I schools. Also, if the parents in a non-Title I school wanted to raise funds for computers for their school, there would be no violation if the Title I schools used Title I funds to buy computers for their schools. This would be contingent on state and local policies that assert control over the allocation of private funding to schools.

Policy Letter 11/1/1995 (G-2548 Title I Handbook)

Discusses similar issues of buying computers as related above: (1) using local funds to purchase computers in a non-Title I school, while Title I funds pay for computers in Title I schools is a violation of supplement, not supplant; and, (2) parental or private, business partnerships funding purchase of equipment and other materials, which is permissible subject to any state and local regulatory prohibitions.

Policy Letter 4/24/1996 (G-2561)

Request of an LEA to purchase four computers for each classroom, two funded by non-Title I funds and two funded by Title I funds was deemed supplanting, not supplementing, state and local funds. The rationale being that the Title I funded computers would be used by all students, both non-Title I and Title I.

Policy Letter 4/26/1996 (G-2562)

Request of an LEA to use Title I, Part A funds for services for limited-English proficient students in a schoolwide program school was approved as part A funds may be used to support any of the activities in the schoolwide program.

Policy Letter 8/2/1996 (G-2571)

Request of a special education, private school to use Title I funds and services if students meet poverty and residency requirements established by Title I legislation. DOE responded that Title I, Part A, funds may be used to coordinate and supplement required services as well as provide additional direct services to children with disabilities.

Policy Letter 12/4/1996 (G-2577)

Determination as to whether State Compensatory Education (SCE) funds qualify as supplemental funds so that an LEA may skip a higher-ranked school attendance area or school receiving SCE funds when allocating Title I funds. DOE responded that given the broad purposes for which SCE funds may be used, decisions about skipping Title I schools would have to be made on a case-by-case basis. To skip a higher ranked Title I school, an LEA would have to determine that the SCE funded program in that school meets the criteria outlined in Section 1114 (schoolwide) or Section 1115 (targeted assistance).

Policy Letter 5/21/1996 (G-2592)

Request to charge \$50 student tuition fee for a Title I summer school program was denied. The summer school program was 50% funded by both Title I and the local district. Title I services must be supplemental and tuition may not be charged for any Title I service. If total funding is insufficient, the LEA must determine whom is most at risk of failing to meet state standards, and serve as many of those students, in order of need, as funding permits.

Policy Letter 3/26/1998 (G-2607)

Methods that Title I can supplement state and/or locally mandated summer school programs. For targeted assistance schools, Title I may provide additional services only to Title I students either during the summer session or for a period of time that would extend the summer session for additional days for Title I participants. Another possibility would be for Title I to supplement mandated Title I summer school with additional services in another subject area, as needed. In a schoolwide program, the school can use Title I funds along with state and local resources to extend the school year for all of its students.

Policy Letter 4/15/1998 (G-2608)

Request to have Title I partially fund the expansion of an innovative laptop computer classroom and at-home computer initiative through a leasing contract. Title I funds, in combination with other funding sources, should not be used to provide services to children not eligible for Title I assistance; this would result in supplanting state and local funds and is not permissible. However, if the LEA was a schoolwide program district, this approach would generally be allowed as long as it meets full schoolwide plan objectives.

Policy Letters 7/1/1998 and 7/24/1998 (G-2614)

A Title I Program Advisor, paid entirely from federal funds, was appointed by the governor to serve on a committee to hear employee grievances, spending about one to one and ½ days per month in this capacity. This was deemed to be supplementary, not supplanting, as limited duties may be assumed by Title I personnel as long as the amount of time is the same proportion of total work time as that for similar personnel (other participating members.)

Policy Letter 1/27/1999 (G-2626)

Concerns a replacement project which met fiscal supplement, not supplant, criteria because: (1) Title I services were provided to participating children in a different classroom setting or at a different time if these children were not participating in the Title I program; (2) the Title I program provides services that replace the course of instruction regularly provided to Title I participants with a program particularly designed to meet the participants needs; and, (3) the LEA provides funds from other than Title I-either the FTE number of staff that would have been provided for the services replaced by the Title I program or the funds required to provide that number of staff.

Policy Letter 3/12/1999 (G-2627)

A targeted assistance school requested that Title I funds pay for a nominal rental fee for laptop computers for Title I students, while non-Title I students would pay the fee. DOE advised that such Title I funding was permissible as long as it was provided only to Title I identified students.

Policy Letter 11/8/1999 (G-2632)

Request to use nine, state DOE Title I funded facilitators, who worked in only Title I eligible schools, so that they can perform the same services in all of the state's low performing school districts. If the work is in accordance with applicable state code, this would be a supplement, not supplant, issue because Title I funded personnel would be used to provide services that state law requires for supplement low performing school districts.

Policy Letter 11/18/1999 (G-2633)

Request to use Title I funds to support college awareness presentations is allowable if provided to only Title I identified students. If such presentations are given in a schoolwide program, it can be funded by Title I for all students.

Policy Letter 12/17/1999 (G-2634)

Concern as to whether Title I personnel may be used as substitutes and not violate supplement, not supplant. In targeted assistance schools, this is permissible if Title I personnel only substitute during non-regularly scheduled teaching periods and substitute as a normal and proportionate duty required of all teachers in that school. In a schoolwide district, however, it would be allowable to use Title I teachers as substitutes and cancel whatever classes they taught.